

REMARKS

This Amendment responds to the final Office Action dated March 5, 2004.

Claims 33, 35, 39 and 40 were rejected under 35 U.S.C. 102 as being anticipated by Gupton (U.S. Pub. No. 2002/0012426). For the reasons set forth in this Amendment, these rejections are respectfully traversed.

Independent claim 33, as well as claim 35 which is dependent from claim 33, contain the following limitation:

"if there is no match, completing the incoming call, keeping a record of the calling party identification, allowing the subscriber to designate the incoming call as a telemarketing telephone number, and adding the calling party identification into the telemarketing database if a preselected criterion for addition is met once more than one subscriber identifies the potential telemarketing phone line as a potential telemarketing phone line."

The Office Action does not address this limitation except to state, at page 3, in the last sentence of the second full paragraph:

"(Note, the claim recites a simple alternative i.e., "If there is a match"; or "if there is no match"; examiner only needs to find one of the claimed limitation.)"

However, Applicant respectfully disagrees with the legal position so stated because it would effectively negate the language of the claim. In order to anticipate a claim, it is axiomatic that each and every element and limitation of the claim must be met. Thus, where there are two different alternative steps, depending upon the outcome of a selection process step, both steps must be met. Because the quoted language of claim 33 is not met by Gupton, the rejection of claims 33 and 35 is not proper.

Gupton also does not meet the limitations set forth in independent claims 39 and 40. Like claim 33, these claims only add a potential telemarketing phone line to the logical telemarketing database if a preselected criterion for addition is met once **more than one** subscriber identifies the potential telemarketing phone line as a potential telemarketing phone line. This distinction is critical because Gupton teaches adding the potential telemarketing phone line based upon the action of a single subscriber, and this

can lead to false identifications. (Applicant respectfully disputes any suggestion that page 2, paragraph 0025 and/or pages 3,4, paragraph 0036 of Gupton teach anything other than that the action of a single subscriber, as opposed to more than one subscriber, will add a potential telemarketing phone line to the telemarketing database.) By contrast, Applicant has invented a process that will populate the telemarketing database, and also allow it to be regenerated, by requiring that the preselected criterion for addition be met once more than one subscriber identifies the potential telemarketing phone line as a potential telemarketing phone line.

Accordingly, because the limitations of all the independent claims are not met by Gupton, it is respectfully submitted that independent claims 33, 39 and 40 are not anticipated, nor can any of the claims that depend upon these claims be anticipated or rendered obvious in view of Gupton since it lacks the critical teaching that a potential telemarketing phone line only be added to the logical telemarketing database if a preselected criterion for addition is met once **more than one** subscriber identifies the potential telemarketing phone line as a potential telemarketing phone line.

Claim 34 was rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Gupton and in view of Council et al. (USP 6,259,779) while claims 36-38 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Gupton in view of Wurster et al. (USP 6,459,780). For the reasons set forth below, these rejections are respectfully traversed.

As already noted, Gupton does not teach, nor suggest, that a potential telemarketing phone line only be added to the logical telemarketing database if a preselected criterion is met once more than one subscriber identifies the potential telemarketing phone line as a potential telemarketing phone line, and neither Council nor Wurster teach anything further in this respect as well. Accordingly, the rejections of dependent claims 34 and 36-38 should be withdrawn.

Finally, Applicant would like to make further comments regarding the rejection of claim 34, especially since similar language has been added by this Amendment in claims 41 and 42 which are dependent upon the other two independent claims (claim 34 is dependent from independent claim 33).

Wurster is not directed to an anti-telemarketing system and it teaches nothing about how one might go about populating, or refreshing, a telemarketing database based upon actions of more than one subscriber. Thus, neither Wurster nor Gupton, nor any combination of the two, teaches or suggests the ability to regenerate or repopulate the telemarketing database, and the fact that such action refreshes the database, making it more reliable and much more valuable. Yet, Applicant teaches precisely this point:

A telemarketing database can also be generated over time based upon simple addition of numbers to the database as they become identified as telemarketing numbers. As the database grows in size, it becomes more accurate, more valuable, and more likely to correctly identify telemarketing numbers. In addition, to prevent the database from becoming stale, it can be periodically revalidated, or regenerated, at preselected intervals. For example, one third of the database might be deleted after a given time interval, such as sixty days. Although this will delete active telemarketing numbers from the database, it will also delete telemarketing numbers that may no longer be telemarketing numbers from the database, and numbers that are still telemarketing numbers will then be reidentified and readded to the database.

Applicant' specification at pages 9-10. This ability to refresh the telemarketing database is claimed in claim 35 which provides that a portion of the plurality of telemarketing numbers in the telemarketing database be periodically deleted and numbers in the deleted portion be added again once the preselected criteria is met, yet nothing of this sort is found in, or suggested by, any combination of Gupton and Wurster.

Based upon the foregoing, it is respectfully submitted that the claims are now in condition for allowance. Reexamination and reconsideration are respectfully requested.

In the event that any minor changes are needed to place this application in condition for allowance, a telephone call to the undersigned would be greatly appreciated.

Finally, Applicant would like to point out the following additional matters bearing on this application.

Application No. 09/707,571
Amendment dated 9/7/2004
Reply to Office Action of March 5, 2004

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First, a PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) is submitted herewith.

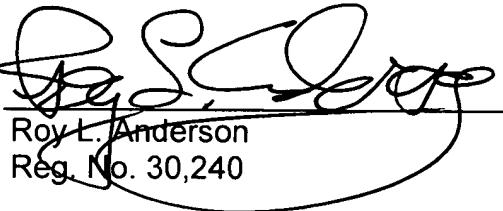
Second, check no. 1196 in the amount of \$860.00 is submitted herewith to pay the fee for a three month extension of time pursuant to 37 CFR 1.136(1) and the fee for a Request for Continued Examination (RCE) which is also submitted herewith.

Respectfully submitted,

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Dated: September 7, 2004

By:


Roy L. Anderson
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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Roy L. Anderson
Name of Person Mailing Paper

September 7, 2004
Date of Deposit


Signature of Person Mailing Paper